Filed 8/12/19 In re M.A. CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re M.A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. M.A., Defendant and Appellant.	F078348 (Super. Ct. No. 17CEJ600515-1) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Gregory T. Fain, Judge.

Joseph M. Ahart, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Levy, Acting P.J., Smith, J. and Meehan, J.

INTRODUCTION

While on the grounds of her high school on March 6, 2017, former minor M.A., then 17 years old, struck another student in the face approximately seven times, breaking the victim's nose. On July 31, 2017, a juvenile petition was filed pursuant to section 602 of the Welfare and Institutions Code,[1] alleging M.A. committed assault by means likely to cause great bodily injury. (Pen. Code, § 245, subd. (a)(4).) On April 18, 2018, in accordance with a plea bargain, M.A. admitted committing battery causing serious bodily injury. (Pen. Code, § 243, subd. (d).)

At the disposition hearing held on May 1, 2018, the juvenile court adjudged M.A. a ward of the court and granted her supervised probation until December 1, 2018. In relevant part, the court ordered M.A. to complete 50 hours of community service at the direction of her probation officer, submit a three-page essay on character, pay a $100 restitution fine, submit to chemical testing, attend anger management counseling, and seek and maintain either employment or educational or vocational training.

On November 1, 2018, the court terminated probation but found M.A. did not satisfactorily complete probation and, therefore, it declined to dismiss the petition and seal M.A.'s records. (§ 786, subd. (a).) M.A. now appeals the court's order and claims the court abused its discretion in finding she did not substantially comply with the terms of her probation. (§ 786, subd. (c)(1).)

We disagree and affirm the order.

DISCUSSION

A. Legal Standard

Section 786 provides that if a ward of the juvenile court "satisfactorily completes" probation, "the court shall order the petition dismissed" and "shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the

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1 All statutory references are to the Welfare and Institutions Code unless otherwise noted.

custody of law enforcement agencies, the probation department, or the Department of Justice." (§ 786, subd. (a).) Satisfactory completion of probation "shall be deemed to have occurred if the person has no new findings of wardship or conviction for a felony offense or a misdemeanor involving moral turpitude during the period of … probation and if he or she has not failed to *substantially comply with the reasonable orders of supervision or probation that are within his or her capacity to perform*." (*Id.*, subd. (c)(1), italics added.)

"Substantial compliance is not perfect compliance. Substantial compliance is commonly understood to mean 'compliance with the substantial or *essential requirements* of something (as a statute or contract) that satisfies its purpose or objective even though its formal requirements are not complied with.'" (*In re A.V.* (2017) 11 Cal.App.5th 697, 709, italics added (*A.V.*).)

A decision to grant or deny section 786 relief is reviewed for abuse of discretion. (*A.V.*, *supra*, 11 Cal.App.5th at p. 701 ["court has the discretion under section 786 to find the ward has or has not substantially complied with … probation so as to be deemed to have satisfactorily completed it"].) Under this standard, "'a trial court's ruling will not be disturbed, and reversal of the judgment [or order] is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.'" (*People v. Hovarter* (2008) 44 Cal.4th 983, 1004; see *People v. Kipp* (1998) 18 Cal.4th 349, 371 ["[a] court abuses its discretion when its ruling 'falls outside the bounds of reason'"].) "A merely debatable ruling cannot be deemed an abuse of discretion." (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 390.)

B. Analysis

1. Summary of Proceedings

In the probation report submitted to the court, M.A.'s supervising probation officer stated that M.A. had not incurred any new violations and had completed her character

essay, completed anger management classes and submitted a negative drug test. However, she had not completed her community service hours or paid her fine, she had dropped out of adult school and she was not employed. M.A. was seven months pregnant at the time of the relevant hearing and the probation report stated: "The former minor reported she was unable to find a location to complete her community service due to her pregnancy. Her current medical condition made her ineligible to complete Community Service Work Program days in lieu of her community service hours. The former minor is currently seven months pregnant. Despite her inability to complete community service hours, your officer believes she complied with all Court orders that were within her capacity to complete." The probation officer concluded that M.A. had "satisfactorily completed terms and conditions of probation …."

The non-supervising probation officer who appeared at the hearing expressed surprise that the supervising probation officer found satisfactory compliance where M.A. failed to attend school or obtain employment, and the court expressly found that M.A. had not substantially complied with four of her probation requirements: she did not complete her community service, she did not go to school, she did not get a job and she did not pay her fine. On this basis, the court denied her request to dismiss the petition and seal her records.

M.A. argues the court abused its discretion by failing to determine whether the probation officer directed her to complete community service and to either attend school or seek and maintain employment. Assuming the probation officer directed her to comply with these conditions, she argues the court's findings are factually unsupported. With respect to the fine, M.A. argues the court was expressly precluded by statute from considering her unpaid restitution fine as unsatisfactory completion of probation. (§ 786, subd. (c)(2).)

2. Notice Argument

We disagree with M.A. that in the absence of an express finding by the court, she is entitled to an inference that her probation officer failed to direct her to comply with the community service and employment or education terms of probation. As the People point out on appeal, "it must be presumed that the probation officer fully and fairly performed the duty imposed upon him by section 1203 of the Penal Code." (*People v. Rosenberg* (1963) 212 Cal.App.2d 773, 777; accord, *People v. Sledge* (2017) 7 Cal.App.5th 1089, 1097; *People v. Cardenas* (2015) 239 Cal.App.4th 220, 235; Evid. Code, § 664 ["It is presumed that official duty has been regularly performed."].) Moreover, the trial court expressly stated these conditions on the record; impressed upon M.A. the requirement that she either work or go to school; and directed M.A. to report to probation within two days, where she would meet with her probation officer and go through the terms of probation "again." The court also made it clear that compliance with the terms of probation was necessary for her to get her records sealed in the future.

3. Community Service and Education or Employment Requirements

We are also unpersuaded by M.A.'s argument that the court's finding she failed to substantially comply with her probation terms is unsupported by substantial evidence. Critically, it was uncontroverted that M.A. did not complete her community service hours, had dropped out of school and was unemployed. (*In re N.R.* (2017) 15 Cal.App.5th 590, 598 [claim that no evidence supported court's finding of willful failure to comply with probation term forfeited by failure to raise it below].) At the time of the hearing, at which M.A. did not personally appear, her counsel represented, and the probation report reflected, that she was seven months pregnant. The court observed, however, that the terms of probation had been imposed six months earlier. There was no evidence presented at the hearing that during the previous six months, M.A. had attempted to comply with those terms of probation relating to community service,

education or employment, and counsel did not object to the court's observation that M.A. could have complied with the terms earlier. (*Ibid.*)

In imposing the terms of probation, the court was encouraging toward M.A. but made clear that she had to comply with the terms of probation and that sealing her records was contingent on compliance. In part, the court stated, "[Y]ou're over 18, so I can't make you go to school. But I can say this, look, you either go to school or you work. You don't just sit around at home and do nothing." M.A. responded affirmatively. Although M.A. subsequently told the probation officer she was "dropped from [adult school] due to her pregnancy," the court found, without objection, that "there is no reason for her to have been dropped from school" and, on review, we find no support in the record for a reasonable inference that the *school* discriminated against M.A. by disenrolling her due to her pregnancy.

In sum, the court was well within its discretion to conclude that these probation requirements were the most important ones, as the record reflects they were. The probation officer's recommendation, one negative drug test, and the completion of a character essay and anger management did not render the court's decision an abuse of discretion. The court's determination that community service and either education or employment comprised the necessary centerpiece—or as case law calls it, "'essential requirements'" (*A.V., supra,* 11 Cal.App.5th at p. 709)—of M.A.'s rehabilitation was a rational decision rather than an arbitrary, capricious, or patently absurd one. That another court might have concluded otherwise simply does not transform this court's decision into an abuse of discretion. (*People v. Bryant, Smith and Wheeler*, *supra*, 60 Cal.4th at p. 390.)

4. Restitution Fine

Finally, we agree with M.A. that under the express terms of section 786, subdivision (c)(2), the court erred in including her nonpayment of the restitution fine as a

consideration. However, the error was harmless under any standard of review.[2] On this record, as discussed herein, we conclude that the nonpayment of the $100 restitution fine was not critical to the court's determination that M.A. failed to substantially comply with her probation terms. To the contrary, although the court mentioned the restitution fine, it was M.A.'s failure to complete community service and either attend school or obtain employment that formed the critical considerations.

Notably, M.A. is not without a remedy as to the future sealing of her records, as she may petition the juvenile court to seal her records under section 781, subdivision (a)(1)(A). On the present record, however, we reject her claim that the court abused its discretion in declining to dismiss the petition against her and seal her records.

DISPOSITION

The juvenile court's order denying former minor M.A. relief under section 786 is affirmed.

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[2] State law errors are reviewed under the standard set forth in *People v. Watson* (1956) 46 Cal.2d 818, 837, which requires a determination "whether there is a 'reasonable probability' that a result more favorable to the defendant would have occurred absent the error." (*People v. Aranda* (2012) 55 Cal.4th 342, 354.) Under the federal standard articulated in *Chapman v. California* (1967) 386 U.S. 18, 24, courts "must determine whether it is clear beyond a reasonable doubt that a rational jury would have rendered the same verdict absent the error." (*People v. Merritt* (2017) 2 Cal.5th 819, 831; accord, *Neder v. United States* (1999) 527 U.S. 1, 15–16, 18; *People v. Gonzalez* (2012) 54 Cal.4th 643, 663). M.A. does not advance an argument as to prejudice.